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JUL 25 2002

OFFICE OF PETITIONS

In re Application of
Daniel J. Sullivan,
Mark P. Crockett, John Epler and
Robert A. Hilgart
Application No. 09/928,130
Filed: August 10, 2001
Title: COMPUTERIZED RISK MANAGEMENT
MODULE FOR MEDICAL DIAGNOSIS

DECISION REFUSING STATUS
UNDER 37 C.F.R. §1.47(a)

This is in response to the facsimile communication and supplemental declaration for patent filed July 12, 2002, requesting to be informed if this submission overcomes the objections cited in the Decision Refusing Status Under 37 CFR §1.47(a) dated June 20, 2002. This communication is being treated as a request for reconsideration of petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on August 10, 2001, without an executed declaration, and naming Daniel J. Sullivan, Mark D. Crockett, John Epler and Robert A. Hilgart as joint inventors. In response to a "Notice to File Missing Parts of Nonprovisional Application" mailed September 18, 2001, applicant timely filed the initial petition under §1.47(a) (and fee) and late surcharge under §1.16(e). Accompanying the petition was a declaration executed by inventors Crockett, Epler and Hilgart; and a declaration executed by inventor Epler on behalf of non-signing inventor Sullivan. The petition was dismissed because the declaration submitted was not executed by all of the available joint inventors on behalf of non-signing inventor Sullivan¹. A declaration properly executed by all

¹ 37 CFR 1.47(a) and 35 U.S.C. 116, second paragraph, require all available joint inventors to file an application "on behalf of" themselves and on behalf of a joint inventor who "cannot be found or reached after diligent effort" or who refuses to "join in an application." Thus, in addition to other requirements of law (35 U.S.C. 111(a) and 115), in an application deposited in the U.S. Patent and Trademark Office pursuant to 37 CFR 1.47(a):

(A) All the available joint inventors must (1) make oath or declaration on their own behalf as required by 37 CFR 1.63 or 1.175 (see MPEP §602, §605.01, and §1414) and (2) make oath or declaration on behalf of the non-signing joint inventor as required by 37 CFR 1.64. An oath or declaration signed by all the available joint inventors with the

available joint inventors on behalf of non-signing inventor Sullivan was required. (Decision mailed June 20, 2002).

The supplemental declaration filed July 12, 2002 does not overcome the objections set forth in the decision mailed June 20, 2002. The supplemental declaration has been amended to include the language "I have been informed that inventor Daniel J. Sullivan has refused to sign a declaration respecting this patent application. For that reason, I am making this declaration on my own behalf and on behalf of non-signing inventor Daniel J. Sullivan." Such a statement in a declaration is not inconsistent with 37 CFR 1.47(a) or 35 U.S.C. 116, and thus, is not objected to. However, this supplemental declaration is not executed by any of the joint inventors, and thus, cannot satisfy the requirement that all available joint inventors file an application on behalf of themselves and on behalf of the non-signing inventor(s). It is further noted that the supplemental declaration is spaced such that substantial portions of pages 2-4 are blank.

The supplemental declaration as filed July 12, 2002 but executed by all of the available joint inventors, without any non-dated/non-initialized alterations², would be acceptable on petition under \$1.47(a). It is additionally preferred that the blank portions of the declaration be minimized. To facilitate quick resolution of this matter, petitioner may wish to fax such a declaration when completed to the attention of the undersigned with concurrent telephone notification of transmittal.

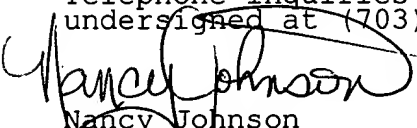
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

signature block of the non-signing inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the non-signing inventor(s), unless otherwise indicated.

(Emphasis added).

² For example, declarations are often rendered unacceptable when one of the signing inventors alters the declaration by crossing out and rewriting his mailing address, but not initialing and dating the change.